

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHOTO-TECHNICAL PRODUCTS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund
of Franchise Tax on Business Corporations
~~Taxes~~ under Article ~~(x)~~ 9-A of the
Tax Law for the Year(s) ~~xxxxxx~~ Ended:
April 30, 1971, April 30, 1972 and April 30, 1973.

State of New York
County of Albany

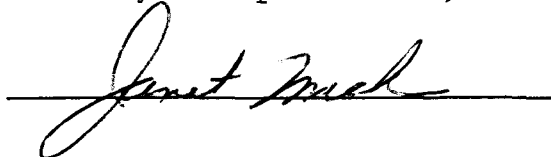
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Photo-Technical
Products, Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Photo-Technical Products, Inc.
623 Stewart Avenue
Garden City, New York 11530

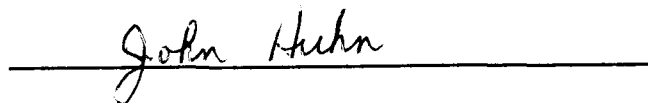
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

1st day of September , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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PHOTO-TECHNICAL PRODUCTS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Franchise Tax on Business Corporations :
~~Taxes~~ under Article (x) 9-A of the :
Tax Law for the Year(s) ~~on~~ ~~Period(s)~~ Ended: :
April 30, 1971, April 30, 1972 and April 30, 1973.

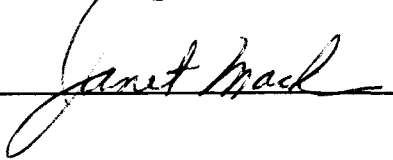
State of New York
County of Albany

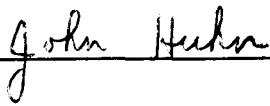
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September, 1977, he served the within
Notice of Decision by (certified) mail upon Rex P. Winters
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Rex P. Winters, CPA
Brout & Company
380 Madison Avenue
New York, New York 10017
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

1st day of September, 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 1, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Photo-Technical Products, Inc.
623 Stewart Avenue
Garden City, New York 11530

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section **(5) 1090** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

John J. Sollecito
Director
Tax Appeals Bureau

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PHOTO-TECHNICAL PRODUCTS, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the	:	
Tax Law for the Years Ended April 30,	:	
1971, April 30, 1972 and April 30, 1973.	:	

The petitioner, Photo-Technical Products, Inc., 623 Stewart Avenue, Garden City, New York 11530, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years ended April 30, 1971, April 30, 1972 and April 30, 1973. (File No. 11684)

A formal hearing was scheduled before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on August 13, 1976 at 10:30 a.m. Prior to the hearing, the petitioner submitted the case to be decided by the State Tax Commission based on the information contained in the file. Due consideration has been given to all the material in said file.

ISSUE

Whether the denial of business allocation, on the ground that a sales and repair branch in California was not a regular place of business outside New York State, was proper.

FINDINGS OF FACT

1. Petitioner, Photo-Technical Products, Inc. (hereinafter PTP), timely filed corporation franchise tax returns under Article 9-A of the Tax Law for the tax years ended April 30, 1971, April 30, 1972 and April 30, 1973.

2. On June 16, 1975, after desk audit, the Corporation Tax Bureau issued a Statement of Audit Adjustment for each of the tax years ended April 30, 1971, April 30, 1972 and April 30, 1973, stating that:

"Based on the information you have furnished in reply to our correspondence, you do not have a regular place of business outside of New York, and therefore may not apply a business allocation percentage to the entire net income." A deficiency under Article 9-A of the Tax Law was assessed as follows:

<u>Period Ended</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
April 30, 1971	\$ 377.00	\$ 88.60	\$ 465.60
April 30, 1972	5,741.00	1,004.68	6,745.68
April 30, 1973	17,300.00	2,487.74	19,787.74

3. Petitioner, PTP, timely filed a petition for redetermination of the deficiency or for refund of the tax.

4. Petitioner, PTP, was included in the U. S. corporation income tax consolidated returns (Form 1120) filed by the parent corporation, Ehrenreich Photo Optical Industries, Inc. Attached to each New York State corporation franchise tax return (Form CT-3) of petitioner, PTP, were copies of the Federal income tax return. Included were copies of the Ehrenreich Photo Optical Industries, Inc. consolidated income statements and balance sheets, with supporting schedules.

5. Petitioner, PTP, is a distributor of photo equipment. Its main office is on the premises of 623 Stewart Avenue, Garden City, New York, where it shares space and employees with the parent corporation, Ehrenreich Photo Optical Industries, Inc., and a number of related subsidiaries of Ehrenreich. Petitioner, PTP, is engaged in the wholesale distribution, installation and servicing of specialized photo processing equipment, cameras, lenses and other photographic paraphernalia, purchased from various suppliers. These include Nikon, Nikkormat, Nikonas, Mamiya and Bronica cameras, lenses and accessories, Metz electronic flash units, Durst enlargers and printers, Kinderman darkroom equipment, Nikon optical measuring and scientific instruments for industry, medical and research fields; it also sells and services its own line of EPOI vibration isolation systems and

optical equipment for the industrial and forensic fields. Petitioner, PTP, essentially handled the distribution of these product lines.

6. Petitioner, PTP, and its parent corporation share offices in Garden City, New York. All orders were accepted in Garden City by petitioner, PTP. Ehrenreich Photo Optical Industries, Inc. did all the billing. Employees in Garden City worked for both petitioner, PTP, and the parent corporation. The total number of employees was 470.

7. Petitioner, PTP, shared a warehouse and offices in San Francisco, California, with the parent corporation. A showroom was used for the display of the PTP line of products. A large inventory of these products was kept for sales and service to the west coast customers of petitioner, PTP.

8. Petitioner, PTP, had a full-time sales manager, a full-time salesman and two full-time repairmen who worked regularly in the California office. All payroll records were maintained by the parent corporation, Ehrenreich Photo Optical Industries, Inc. Payroll taxes and other related expenses for petitioner's employees were charged against the income of petitioner, PTP, on the consolidated income statement.

9. Rent for the California office and the entire rent for the Garden City office were charged against petitioner, PTP's income on the consolidated income statements attached to the Federal corporation income tax return (Form 1120). Only the Garden City rent was shown on Schedule "G" of the New York State franchise tax return (Form CT-3). Rent for the subsidiary was charged by the parent corporation as a percentage of the sales of petitioner, PTP.

10. Petitioner, PTP, failed to reflect either the annual rent charge for the California office or the salaries paid its employees working in the California office in Schedule "G" of the New York State franchise tax return (Form CT-3) for the three years in question. Facts as to the accounting allocations of these expenses were supplied by petitioner, PTP, upon inquiry during a desk audit by the Corporation Tax Bureau.

11. Subsidiary capital and investment capital were not used as factors in calculating the allocated business capital of applicant, PTP, on its franchise tax reports for 1971, 1972 and 1973.

12. Wages, salaries and other compensation of employees were not reported by petitioner, PTP, as an item for allocation in Schedule "G" of the franchise tax return, Form CT-3. The amount for wages of all petitioner's employees was charged against income

on the parent corporation's consolidated income statement, and on the Federal corporation income tax return (Form 1120).

CONCLUSIONS OF LAW

A. That the petitioner failed to properly report the amount of rent for its California office and the wages, salaries and other compensation of employees in the California office. That from the information supplied on the New York State corporation franchise tax return and its accompanying Federal corporation income tax returns, the business allocation percentage could be computed if applicable.

B. That, according to former 20 NYCRR 4.11(b), "a regular place of business is any bona fide office (other than a statutory office), factory, warehouse or other space which is regularly used by the taxpayer in carrying on its business." Of the same import is the applicable section 4.16(d) of the Ruling of the State Tax Commission issued March 15, 1962.

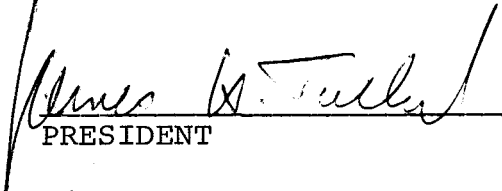
C. That the sales and service office of Photo-Technical Products, Inc. in California, in which some of its employees were in regular attendance carrying on petitioner's business, constituted a regular place of business outside the State within the meaning and intent of section 210, subd. 3(a)(4) of the Tax Law.

D. That the petition of Photo-Technical Products, Inc. for redetermination of deficiency or for refund of tax under Article 9-A of the Tax Law for the years ended April 30, 1971, April 30, 1972 and April 30, 1973 is granted. The statements of audit adjustment dated June 16, 1975 are cancelled.

DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER